



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL,  
ATTORNEY GENERAL**

January 18, 1977

The Honorable Kenneth H. Ashworth    Letter Advisory No. 119  
Commissioner  
Coordinating Board  
Texas College & University    Re: Establishment of a  
System    student loan insurance  
P. O. Box 12788, Capitol Station    program.  
Austin, Texas 78711

Dear Dr. Ashworth:

You have asked our opinion whether the Texas Opportunity Plan Fund, created pursuant to article 3, sections 50b and 50b-1 of the Texas Constitution, may be used as a reserve fund for insuring student loans. The Coordinating Board administers, pursuant to section 52.01 et seq. of the Education Code, the Hinson-Hazlewood College Student Loan Program, under which direct loans to eligible students are made from the Texas Opportunity Plan Fund. You advise us that since 1971 loans made from the Fund have been insured against loss through the United States Department of Education under the Federal Guaranteed Student Loan Program. In passing the Education Amendments of 1976, Public Law 94-482, 90 Stat. 2081 (Oct. 12, 1976), Congress has, however, substantially revised the terms of the Guaranteed Student Loan Program to provide incentives for states to insure student loans, with the federal government offering to reinsure those loans.

In view of these modifications in the federal program for insuring student loans, you advise us that the Coordinating Board may wish to consider recommending to the Legislature the establishment of a State program for insuring student loans made both by private lenders and through the Hinson-Hazlewood Program. Accordingly, you ask if the Texas Opportunity Plan Fund may be used as a reserve fund for insuring student loans as well as for making direct loans or, alternatively, if the Legislature might constitutionally establish a separate State program to guarantee student loans which would be eligible for reinsurance through the federal government.

We do not believe that sections 50b and 50b-1 of article 3 of the Constitution authorize such a student loan insurance program. Those sections empower the Coordinating Board to administer the Texas Opportunity Plan Fund

to make loans to students who have been  
admitted to attend any institution of  
higher education within the State of  
Texas . . . . Tex. Const. art. 3, § 50b(b).

The Texas Opportunity Plan Fund is authorized to operate only as a program under which direct loans are made to eligible students. The modifications you propose would fundamentally alter the nature of the Fund, converting it from a direct student loan program into a program to insure student loans made by both public and private entities. We do not believe such a student loan insurance program is within the scope of sections 50b and 50b-1 of article 3. We do not, therefore, believe that the Texas Opportunity Plan Fund may constitutionally be used as a reserve fund for insuring student loans.

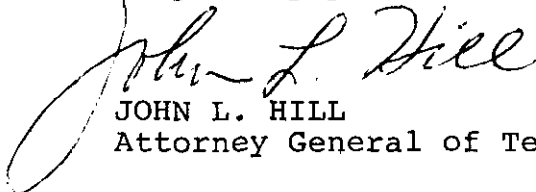
The constitutionality of any legislation creating a separate program to guarantee student loans would necessarily depend upon the provisions of the particular bill proposed. We believe, however, that such a program could constitutionally be established, upon a finding by the Legislature that a public purpose would thereby be accomplished, provided the legislation included sufficient controls to assure that the program would actually serve that public purpose, and upon assurance that the State would receive adequate consideration or benefit for the services provided to private parties. See Attorney General Opinions H-912 (1976); H-445 (1974); H-416 (1974). Inasmuch as no proposed legislation has been submitted for our consideration we cannot, of course, advise you as to the constitutionality of any particular bill.

#### S U M M A R Y

The Texas Opportunity Plan Fund may not constitutionally be used as a reserve fund for insuring student loans. The Legislature could, upon a finding that a public purpose would be served, constitutionally establish

a separate student loan insurance program,  
provided the legislation included sufficient  
assurance that the program would actually serve  
the public purpose and that the State would receive  
adequate consideration for the services  
provided.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee

jwb